

REMARKS

In the Official Action dated March 2, 2011, Claims 10, 11 and 18 were pending.

Applicant gratefully appreciates the Examiner's indication that the finality of the previous Official Action dated April 14, 2010 is withdrawn, in view of the remarks presented in the Request For Pre-Appeal Conference filed October 14, 2010. Applicant notes that the current Amendment is based on the Amendment filed on February 1, 2010, entered as of right, in response to the non-final Official Action dated July 31, 2009.

In the current Amendment, Claim 10 has been amended to further clarify the features recited therein; Claim 20 is newly presented, depending from Claim 10; independent Claim 21 is newly presented, directed to a combination comprising a dental implant, a fluid material suitable for preserving the dental implant and a package. Support for the amendments is found, for example, on Page 5, Lines 4-22 of the application as originally filed. No new matter has been introduced.

The Examiner has rejected Claims 10, 11 and 18 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner has alleged that it is not clear whether the recitation, "with fluid material preserving the dental implant" is intended to refer to the package or to the dental implant.

In response, Applicant has amended Claim 11 to recite a package for holding a dental implant and for containing a fluid material suitable for preserving the dental implant. Thus, it is clarified that the fluid material is contained within the package and the fluid material is used to preserve the dental implant. Applicant respectfully

submits that the above rejection is overcome and withdrawal thereof is respectfully requested.

The Examiner has rejected Claims 10 and 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over Japanese Publication No. JP 10-181735 to Kishimoto et al. (hereinafter "Kishimoto") in view of U.S. Patent No. 6,793,101 to Shinozaki et al. (hereinafter "Shinozaki").

Applicant respectfully traverses the above rejection in view of the following remarks.

Claim 10 is directed to a package for holding a dental implant and for containing a fluid material suitable for preserving the dental implant. The package comprises a capsule and a cap. The capsule consists of cyclic olefin copolymer (hereinafter "COC") with an impermeability to moisture of less than 5% fluid loss per year and the cap is formed of low-density-polyethylene (hereinafter "LDPE").

The claimed invention contemplates a package for holding a dental implant and for containing a fluid material. Applicant has discovered that a LDPE cap in combination with a COC capsule is particularly advantageous for preserving a dental implant in the fluid material, because COC is a very hard, glass-like material whereas LDPE is a relatively soft material. Thus, when the capsule and the cap are screwed together, a satisfactory liquid tight seal is obtained between the capsule and the cap. Accordingly, the claimed combination of the capsule and the cap provides a synergistic result, which goes beyond the sum of its parts.

Kishimoto teaches that the material for forming a container can be surface treated to reduce the appearance of fingerprints on the container. The container can be

connected to a cap through threads. However, no such a cap is disclosed by Kishimoto, not to mention the material(s) for forming the cap.

Shinozaki discloses a synthetic resin bottle cap unit, which comprises an inner cap and an outer cap. The inner cap is fitted into and around the bottleneck. The outer cap is detachably screwed to the inner cap. Shinozaki discloses that the bottle cap unit can be formed of a polypropylene or LDPE resin.

The Examiner has alleged that it would have been obvious to combine the bottle cap unit of Shinozaki, formed of LDPE, with the container of Kishimoto. Specifically, the Examiner's rationale is simply that LDPE is a known material for caps and therefore it would have been obvious to use such a cap material with the container of Kishimoto.

Applicant respectfully disagrees in this regard. First, LDPE and COC are merely two selections from a wide range of polymers and other materials, which are suitable for containers and caps. Thus, when a person of ordinary skill in the art contemplates manufacturing a container having a cap, the person would have a large number of options to consider. Accordingly, it is not a necessary choice for the person to combine the two claimed materials.

Kishimoto is concerned with improving the appearance of a container comprising COC. Specifically, the above goal is achieved by modifying the outside layer of the container in a manner that avoids dirt adhesion, for example, from fingerprint. However, Kishimoto does not disclose the function of the container, not to mention a function of preserving dental implants. Moreover, Kishimoto does not teach that COC is particularly beneficial for the storage of any particular substance or object. Hence, there is

not teaching, suggestion, motivation or reasoning that would have prompted the person of ordinary skill in the art to select this particular material for the purpose of packaging and preserving dental implants.

Shinozaki is concerned with providing a tamperproof bottle cap unit, which is removable from the container for separate collection after use. The bottle is used for liquid content, and the inner cap forms a sprout for dispensing the liquid. Specifically, the two-part configuration of the cap unit is critical, because the inner cap is forced into the container and the outer cap is screwed onto the inner cap to allow the outer cap to only connect to the inner cap.

Although both parts of the cap can be made from a synthetic resin, such as LDPE, no particular benefit of the cap is disclosed which is attributed to LDPE. Instead, the selection of LDPE necessitates the design of the bottle cap ("There is a need for separately connecting synthetic resin products of efficient reutilization of discarded synthetic resin bottles and containers." See Co. 1, Lines 13-15 of Shinozaki). Thus, no particular benefit or advantage of LDPE is disclosed by Shinozaki, which would have prompted the person of ordinary skill in the art to select LDPE from a large number of options.

Furthermore, there is no teaching, suggestion, motivation or reasoning found in either Kishimoto or Shinozaki to combine a COC packaging with a LDPE cap. Specifically, there is no clear reason why the person of ordinary skill in the art would select LDPE from Shinozaki, when designing a cap for the Kishimoto container. Particularly, Shinozaki only mentions in a general manner a synthetic resin, and Shinozaki also discloses polypropylene as an alternative material in addition to LDPE. Therefore, no

particular benefits of LDPE are taught or remotely suggested, which would have prompted the person of ordinary skill in the art to single out this material over all the other suitable materials, such as polypropylene.

In contrast, as discussed above, the combination of a capsule made of COC and a cap made of LDPE as claimed in the present invention provides a satisfactory liquid tight seal between the capsule and the cap to permit longer shelf-life of the dental implant, which benefit is not disclosed in the prior art and is, of course, not available to the products of the prior art. Applicant respectfully submits that the claimed combination provides a synergistic result, which cannot be achieved by an arbitrary selection from a group of known materials.

In addition, under the guidance of the disclosure of Shinozaki, the person of ordinary skill in the art would understand that Shinozaki achieves the goal of separately collecting bottle caps by means of the two-part configuration of the cap rather than the material of the cap. Thus, the person would be prompted to adopt the two-part design rather than a specific material, when the person intends to design the cap. Accordingly, even assuming *arguendo* that the teaching of Kishimoto and Shinozaki can be properly combined, the combined teaching would not result in the claimed invention.

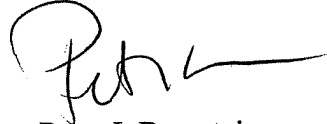
In summary, Applicants respectfully submits that the combined teaching of Kishimoto and Shinozaki fails to disclose all the limitations recited in Claim 10 and, furthermore, there is no teaching, suggestion, motivation or reasoning that would have prompted the person of ordinary skill in the art to combine the teaching of Kishimoto and Shinozaki to arrive at the claimed invention.

Obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003)) and a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does (*KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Based on the foregoing analysis, Applicants respectfully submits that Claim 10 is patentable over Kishimoto and Shinozaki. Claims 11, 18 and 20 are also patentable over Kishimoto and Shinozaki at least in view of their dependency upon Claim 10.

Newly presented independent Claim 21 recites a combination of a dental implant, a fluid material suitable for preserving the dental implant, and a package configured to hold the dental implant therein and to contain the fluid material therein. The package comprises a capsule and a cap, wherein the capsule consists of cyclic olefin copolymer with an impermeability to moisture of less than 5% fluid loss per year and wherein the cap is formed of low-density-polyethylene. Thus, Claim 21 recites all the features of Claim 10. Accordingly, Claim 21 is patentable over Kishimoto and Shinozaki at least in view of the foregoing analysis. Furthermore, Applicant respectfully submits that Shinozaki requires a spout for pouring the liquid in the container. Thus, Shinozaki teaches a container for pouring a liquid, as opposed to the claimed package for containing a preserving liquid.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter I. Bernstein', with a long horizontal stroke extending to the right.

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